

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building

Room 210

9:00 a.m.

October 18, 2017

TELEPHONE MEETING

### **MINUTES**

#### **DIVISION STAFF PRESENT:**

Jonathan Stewart, Division Director  
Mark Fagergren, Education and Licensing Director  
Kadee Wright, Chief Investigator  
Justin Barney, Hearing Officer  
Allen McNeil, Real Estate Analyst  
Elizabeth Harris, Assistant Attorney General  
Amber Nielsen, Board Secretary  
Jennica Gruver, Real Estate Education Coordinator  
Van Kagie, Investigator  
Mark Schaerrer, Investigator  
Sarah Nicholson, Investigator  
Hillarie Murray, Division Staff  
Faruk Halilovic, Division Staff

#### **COMMISSION MEMBERS PRESENT:**

Cal Musselman, Vice Chair  
Lerron Little, Commissioner  
Russell K. Booth, Commissioner  
William Perry, Commissioner

#### **GUESTS:**

Tammy Lund	Kreg Wagner
Heather Swanger	Vanessa Clayton
Shane Norris	Dan Naylor
Kevin Swenson	Brian Swan
BJ Jackson	Jeremy McCandless
Marc Sitterud	Jaime Bryson

The October 18, 2017 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Vice Chair Musselman conducting. Chair Chapman was excused from today's meeting.

#### **PLANNING AND ADMINISTRATIVE MATTERS**

Approval of Minutes – A motion was made and seconded to approve the minutes

from the September 20, 2017 meeting of the Commission as written. Vote: Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes. The motion was approved.

Kreg Wagner spoke briefly regarding the New REPC. He stated the response in the classes has been overwhelmingly positive. Vice Chair Musselman asked if there had been any issue with regards to the earnest money. Mr. Wagner stated that issue has been cleared up with little clarification and instruction on that portion.

## **DIVISION REPORTS**

### **DIRECTOR'S REPORT – Jonathan Stewart**

Director Stewart reported NAR released another survey regarding brokerage firms. He shared some information from that report. According to NAR, the results of the annual survey indicate that keeping up with technology, maintaining sufficient inventory, competition from nontraditional participants and profitability are among the biggest challenges that brokerage firms face. Seventy-nine percent of real estate firms have a single office, typically with three full-time real estate licensees, consistent with 2016. Eighty-four percent of firms are independent non-franchised firms, and 13 percent are independent franchised firms. Eighty-one percent specialize in residential brokerage, down from 85 percent in 2016. Thirty-six percent of firms are LLCs, 26 percent are sole proprietorships, 27 percent are S-Corps, and nine percent are C-Corps. Fifty percent of firms expect competition to increase in the next year from non-traditional market participants, up from 43 percent in 2016. About the same percentage of firms expect competition to increase from virtual firms (up from 47 percent in 2016), and only 15 percent expect competition to increase from traditional brick-and-mortar firms. According a NAR news release, "For a third year in a row, the survey found the vast majority of firms have an optimistic outlook for the future of the industry's growth. Although expectations have slightly decreased from last year's survey, firms remain confident and expect profitability from all real estate activities to increase or stay the same over the next year." Residential real estate firms are more optimistic compared to commercial firms; 62 percent of firms expect profitability to improve, compared to 65 percent in 2016. Real estate firms typically received 30 percent of their customer inquiries from past client referrals, another 30 percent from repeat business from past clients, 20 percent from their website or social media, 2nd one percent through open houses. Only nine percent of firms are aware of wire fraud happening at their firm at closing and 59 percent provide education to clients on the subject.

### **ENFORCEMENT REPORT – Kadee Wright**

Ms. Wright reported in the month of September the Division received 22 complaints; opened 5 cases; closed 24 cases; leaving 383 open cases. There are 36 cases assigned to the AG's office.

### Stipulations for Review

Randy L Benoit  
Debbie Ashwood  
Homie, Inc  
Freddi J ("Tyke") Martin

### **EDUCATION AND LICENSING REPORT – Mark Fagergren**

Mr. Fagergren reported that it has been a busy month. He reported the Brokerage Practices Committee has not been created yet, but will be created soon.

Mr. Fagergren reported the licensing statistics show a drop in overall numbers. However, there had already been over 100 new applications received in the first two week of October.

Mr. Fagergren stated IDW was held last week. He thanked Vice Chair Musselman for attending and participating in the panel. He also recognized Representative Froer for participating in the panel as well. He stated there was a healthy discussion. He stated it was a great session with good training.

Mr. Fagergren reported last month Kent England from NAIOP attended the meeting to discuss the void in Core CE for Commercial topics. Mr. Fagergren reported he later met with Mr. England and they came to a resolution. They feel the industry needs to be better informed on the topics that are available. Mr. Fagergren also reported he was contacted by Scott Sabey regarding CCM Forms Committee preparing a document similar to the REPC but for commercial transactions. He stated the form would be a PSA. He stated the hope would be to get the form approved as a State Approved form. The first step would be to get a hard copy to the Commission for their approval before being sent to the AG's Office for approval. Commissioner Booth stated he feels a state approved form is sorely needed. There was some continued discussion on what would need to take place. There was a decision to form a committee to review the document. This topic will be added to the agenda for the next meeting for further discussion.

### **COMMISSION AND INDUSTRY ISSUES**

The Commission considered the delegation of approval to the Division for individuals seeking an equivalency exception to the requirement of having a GED/High School Diploma. After a brief discussion, the Commission felt that a change was not necessary and the current system should remain in place.

The owner exemption was discussed regarding the change from an individual to a person, which included entities. There was lengthy discussion regarding this issue. The Commission also reviewed some of the information Ms. Harris gathered regarding owner exemptions in other states. Vice Chair Musselman proposed

starting a committee to review this issue and present a proposal to the Commission. Commissioners Booth and Perry both will serve on the committee, as will Ms. Wright from the Division and Share Norris of the public. Other individuals may be added.

Mr. Barney reported the rule amendment which was voted on by the Commission previously was filed on October 2, 2017 after 5:00 p.m. There will be a public comment period through December 1. The earliest effective date for this rule would be December 8. This filing pertains to rule amendments regarding branch broker supervision, and approving the New REPC and the Earnest Money addendum as state approved forms.

There was some discussion of the Lead Based Paint disclosure and whether there was a conflict with the Federal requirements and the wording in the New REPC. There was a lengthy discussion regarding the rule which was adopted 20 years ago and a rule summary which was provided by the EPA. There was some discussion whether the language should be changed. Mr. Wagner stated he will draft language to update the lead based paint disclosure.

Vanessa Clayton, an attorney for Homie, Inc, took a moment to thank the Commission for seeking a swift resolution in this investigation. Ms. Clayton noted some mitigating circumstances regarding their case and stated she is hopeful this matter will be wrapped up to the satisfaction of all involved.

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved.

### **CLOSED TO PUBLIC**

An Executive Session was held from 10:23 a.m. to 11:09 a.m.

### **OPEN TO PUBLIC**

#### **Results of Executive Session**

##### Results of Stipulations

Randy L Benoit – Approved with Division Concurrence  
Debbie Ashwood – Approved with Division Concurrence  
Homie, Inc – Approved with Division Concurrence  
Freddie J ("Tyke") Martin – Approved with Division Concurrence

A motion was made and seconded to adjourn the meeting until the hearing later in the afternoon at 1:00 p.m. Vote: Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved. The meeting adjourned at 11:10 a.m.

The meeting resumed at 12:57 p.m. for the Informal Hearing with Vice Chair Musselman conducting.

**INFORMAL HEARING:**

12:59 p.m.            Jeremy R McCandless – Respondent  
                             Marc Sitterud, witness for respondent  
                             BJ Jackson, witness for respondent  
                             Jaime Bryson, witness for respondent

Mr. McCandless' hearing concluded at 2:05 p.m.

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved.

**CLOSED TO PUBLIC**

An Executive Session was held from 2:05 p.m. to 2:17 p.m.

**OPEN TO PUBLIC**

**Results of Executive Session**

Mr. McCandless will be notified by mail of the results of the hearing.

A motion was made and seconded to adjourn the meeting. Vote: Vice Chair Musselman, yes; Commissioner Little, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved. The meeting adjourned at 2:17 p.m.